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IN THE COURT OF APPEALS OF INDIANA

TINA FOULLOIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0604-CR-212
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Nancy Broyles, Commissioner
Cause No. 49G05-0512-FC-207905

March 14, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Tina Foullois appeals her conviction for attempted robbery as a class C felony.[1] Foullois raises one issue, which we revise and restate as whether the evidence is sufficient to sustain Foullois's conviction. We affirm.

The facts most favorable to the conviction follow. On December 2, 2005, Ellen Purvis, a manager at a hardware store in Marion County, arrived at work around 6:30 a.m., turned off her truck, and prepared to get her belongings out of her truck. A pickup truck with "Salvage King" written on the side, a ladder on top of it, and a wheelbarrow in it, sped right up behind Purvis, and Foullois jumped out of the pickup truck. Foullois held up her hands and said, "I'm not going to hurt you, I'm not going to hurt you, I just want your money." Transcript at 12. Purvis thought Foullois was "high or drunk." Purvis told Foullois that she did not have any money. Transcript at 12-13. Foullois told Purvis that she needed money for food and kerosene and for her children, and kept repeating, "I'm not going to hurt you, I just want your money, I just want your money." Id. at 36. Foullois walked toward the back of her truck and reached into the bed of the truck. Purvis told Foullois "if you pull anything out of there, I will shoot you," acted like she had a gun in her coat pocket, and pressed the panic alarm on her keychain, which activated her vehicle's alarm. Id. at 13. Foullois jumped back into her truck and sped off at a high rate of speed.

[1] Ind. Code §§ 35-42-5-1 (2004); 35-41-5-1 (2004).

After the woman sped away, Purvis, who was "petrified," went into the hardware store, hid behind the cashier's stand, and called 911. Id. at 15. Purvis gave the police a description of the pickup truck.

Indianapolis Police Officer Michael Andersen identified a truck matching the description. Officer Andersen pulled up to the rear of the truck and investigated the truck. Foullois came out of a residence and asked Officer Andersen what was going on. Officer Andersen told Foullois that another officer would be down to explain something more later.

Indianapolis Police Officer Mark Quigley informed Foullois of her Miranda rights, and that there was an incident that he believed involved the truck parked outside and involved a white female fitting her description. Foullois said that she did not have any idea what could have happened. Foullois then said, "I think I know what you're talking about." Id. at 62. Foullois said that she had been out drinking, wanted more money for alcohol, and attempted to sell Purvis some jeans in order to get some money.

The State charged Foullois with attempted robbery as a class C felony. After a bench trial, the trial court found Foullois guilty as charged. The trial court sentenced Foullois to five years in the Indiana Department of Correction with three years suspended.

The sole issue is whether the evidence is sufficient to sustain Foullois's conviction for attempted robbery as a class C felony. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v.

State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

The offense of robbery as a class C felony is governed by Ind. Code § 35-42-5-1, which provides that "[a] person who knowingly or intentionally takes property from another person or from the presence of another person . . . by using or threatening the use of force on any person . . . or . . . by putting any person in fear . . . commits robbery, a Class C felony." An attempt is defined by Ind. Code § 35-41-5-1, which states in part that "[a] person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime." A "substantial step" toward the commission of a crime, for purposes of the crime of attempt, is any overt act beyond mere preparation and in furtherance of intent to commit an offense. Hughes v. State, 600 N.E.2d 130, 131 (Ind. Ct. App. 1992). Whether a defendant has taken a substantial step toward the commission of the crime, so as to be guilty of attempt to commit that crime, is a question of fact to be decided by the trier of fact based on the particular circumstances of the case. Id. Thus, to convict Foullois of attempted robbery as a class C felony, the State needed to prove that Foullois: (1) knowingly or intentionally; (2) took a substantial step toward; (3) taking property from Purvis or from the presence of Purvis; (4) by using or threatening the use

of force on Purvis; or (5) by putting Purvis in fear. See Ind. Code §§ 35-42-5-1; 35-41-5-1.

Foullois appears to argue that the evidence is insufficient to support her conviction because the State failed to prove that she intended to rob Purvis, that she took a substantial step towards committing robbery, and that she used or threatened the use of force, threatened Purvis with harm, or demanded money from Purvis. We find Daniel v. State, 526 N.E.2d 1157 (Ind. 1988), instructive. In Daniel, the defendant entered a convenience store, backed a cashier up, and stated that he wanted money. 526 N.E.2d at 1159. The defendant was convicted of robbery as a class C felony. Id. On appeal, the defendant argued that the State failed to prove that he took property from the cashier by putting the cashier in fear and that he merely asked the cashier for money and did not touch her or physically force her to do anything. Id. at 1161. The Indiana Supreme Court concluded that the jury could reasonably have concluded from the cashier's testimony that the defendant took the money by putting the cashier in fear and that Daniel was not merely asking for money because the cashier testified that she was in fear and that her fear was reasonable given the fact that the defendant had backed her up and said he wanted the money. Id.

Here, at 6:30 a.m. and while it was still dark, Foullois sped right up behind Purvis and jumped out of her pickup truck. Foullois kept repeating, "I'm not going to hurt you, I just want your money, I just want your money." Transcript at 36. Foullois walked toward the back of her truck and reached into the bed of the truck. Purvis told Foullois

"if you pull anything out of there, I will shoot you," acted like she had a gun in her coat pocket, and pressed the panic alarm on her keychain, which activated her vehicle's alarm. Id. at 13. Foullois jumped back into her truck and sped off at a high rate of speed. Purvis testified that she was "petrified" and "scared." Id. at 15. Based on the record, reasonable inferences support a finding that Foullois intended to rob Purvis. Further, evidence was presented that Foullois took a substantial step toward the crime by repeatedly telling Purvis, "I'm not going to hurt you, I just want your money, I just want your money." Id. at 36. See, e.g., Cherrone v. State, 726 N.E.2d 251, 256 (Ind. 2000) (holding that evidence was sufficient to support a reasonable inference that defendant intended to rob victim and took a substantial step toward the commission of that crime); Hampton v. State, 468 N.E.2d 1077 (Ind. Ct. App. 1984) (defendant who was found wearing ski mask outside restaurant, but who did not enter restaurant or accost employees, took substantial step towards committing robbery). Evidence of probative value exists from which the jury could have found Foullois guilty of attempted robbery as a class C felony. See, e.g., Daniel, 526 N.E.2d at 1161.

For the foregoing reasons, we affirm Foullois's conviction for attempted robbery as a class C felony.

Affirmed.

SULLIVAN, J. and CRONE, J. concur